

Application SN: 10/764,063
Amendment Dated: May 2, 2005
Reply to Office Action of: December 2, 2004

REMARKS

The objection to the drawings has been noted. Corrected drawing sheets in compliance with 37 C.F.R. §1.121(d) are submitted herewith, including replacements sheets. The corrections are shown in red on the annotated drawing sheet. Number
5 corrections were made to Figures 1 and 3. Graphics were added to Figure 3 and identified by the numeral 82.

The claims have been rejected under 35 U.S.C. §102 as being anticipated by Rossi. At the outset, a review of the Applicants' invention is believed helpful in resolving prosecution issues.

10 The Applicants' invention is a toy and more particularly an amusement toy for animals such as cats. The device has a lower base which houses a battery, switch, motor and a fan having a horizontally disposed blade. The lower base has a generally semi-circular molded exterior shell and is heavily weighted. An upper base portion rests on the lower base and has vents. The lower base is enclosed by a baseplate having apertures
15 which are shown as being generally concentric in Figure 1.

A generally cylindrical, transparent housing is secured to the base. The top of the housing or container is enclosed by a vented cap. The housing cap encloses a viewing chamber. Inlets in the upper base allow air to be directed by the fan into the container chamber through the slots or vents in the upper base of the container. Air flows through

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the container imparting a swirling, flying motion to decorative particles inside the container. Preferably the particles are a light weight plastic or coated paper and are shaped to resemble flying insects such as moths or butterflies. The particles may be coated or decorated with luminous paint so when they are exposed to incandescent light, they will subsequently appear to glow. Domestic animals such as cats, kittens or puppies, because of their playful nature, will be attracted to the flying items in the container, appealing to the animal's curiosity and natural instincts. As the animal strikes or paws the device, it will rock or tilt and, because of the shape the weight base, will return to its upright position to provide a device which will hold the attention of an animal for a long period of time.

Claim 1 has been rewritten as independent Claim 8 to more particularly point out and amplify the unique features of the Applicants' invention.

Rossi discloses a display device which simulates snowfall. The device includes a base having a transparent container positioned on its top which forms a closed chamber. A motor within the base rotatively drives a fan blade within and adjacent the bottom of the chamber. Light weight particulate materials are disposed within the interior of the chamber and, upon actuation of the fan blade, will circulate through the chamber simulating snowfall. While the Rossi device may be broadly considered to be an

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amusement device it is more accurately a novelty display device which, in use, remains stationary and simulates snowfall.

Claim 8 now specifies the Applicants' device has a base having a generally semi-circular exterior base which includes weight means for returning the device to an upright position. The recitation of the semi-circular exterior clearly distinguishes from Rossi
5 which simply has rounded corners. It is noted the bottom surface of Rossi is flat and is not semi-circular. If the Rossi device were struck, it would either slide sideways because of its flat base or if struck hard enough would tip over rather than return to an upright position. The curved corners would not assist in maintaining an upright orientation.

Applicants' Claim 8 also specifies the fan is in the lower base enclosed by an
10 apertured baseplate above the fan. Thus, the fan blade is not positioned in the chamber in which the flying particles are located. This also is in direct contrast to Rossi which shows a fan positioned within the chamber 24 adjacent and spaced upwardly from the base top. With Applicants' device, the fan is positioned below the apertured baseplate so only air
15 circulates in the viewing chamber to cause the flying effect of the particles. If Applicants' device were constructed in the manner of Rossi, the fan blades would strike, interfere and possibly damage the flying particles.

Thus, from the foregoing reasons, it is believed the Applicants' device, as set forth in Claim 8, is patentable over Rossi. 35 U.S.C. §102 requires every element of the

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claimed invention must identically disclosed either expressly or under the principals of inherency in a single reference. *Corning Glassworks vs. Sumotoma Electric*, 9 USPQ 2d 1962 (Fed. Cir. 1989)

As clearly demonstrated above, Claim 8 sets forth elements not present or suggested in Rossi.

It is also submitted that Rossi does not render the Applicants' invention obvious under 35 U.S.C. §103. Rossi deals with a passive novelty display device and not an interactive pet amusement device. Accordingly, there would be no suggestion and no need for Rossi to incorporate a semi-circular, weighted base as set forth in Applicants' Claim 8.

The remaining claims are all dependent either directly or indirectly on Claim 8 and are urged allowable for that reason.

With respect to dependent Claim 9, this claim describes a baseplate having a central dome which imparts a swirling motion to the airflow induced by the fan blade below the baseplate. This feature is not present in Rossi since Rossi positions his fan blade directly in the viewing chamber and does not position the fan below an apertured baseplate including the dome to affect the swirling motion.

Claim 10 is directed to weight means configured as a sleeve which centrally receive the motor. The positioning of the motor within a weighted sleeve in the lower

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baseplate positions the center of gravity of the device at the bottom so that it is self-righting. Again, Rossi is a passive device and has no suggestion for self-righting amusement or viewing devices.

From the foregoing reasons, it is believed the claims, as presented herewith,
5 clearly define over the art of record.

A favorable action is respectfully solicited.

Respectfully submitted,

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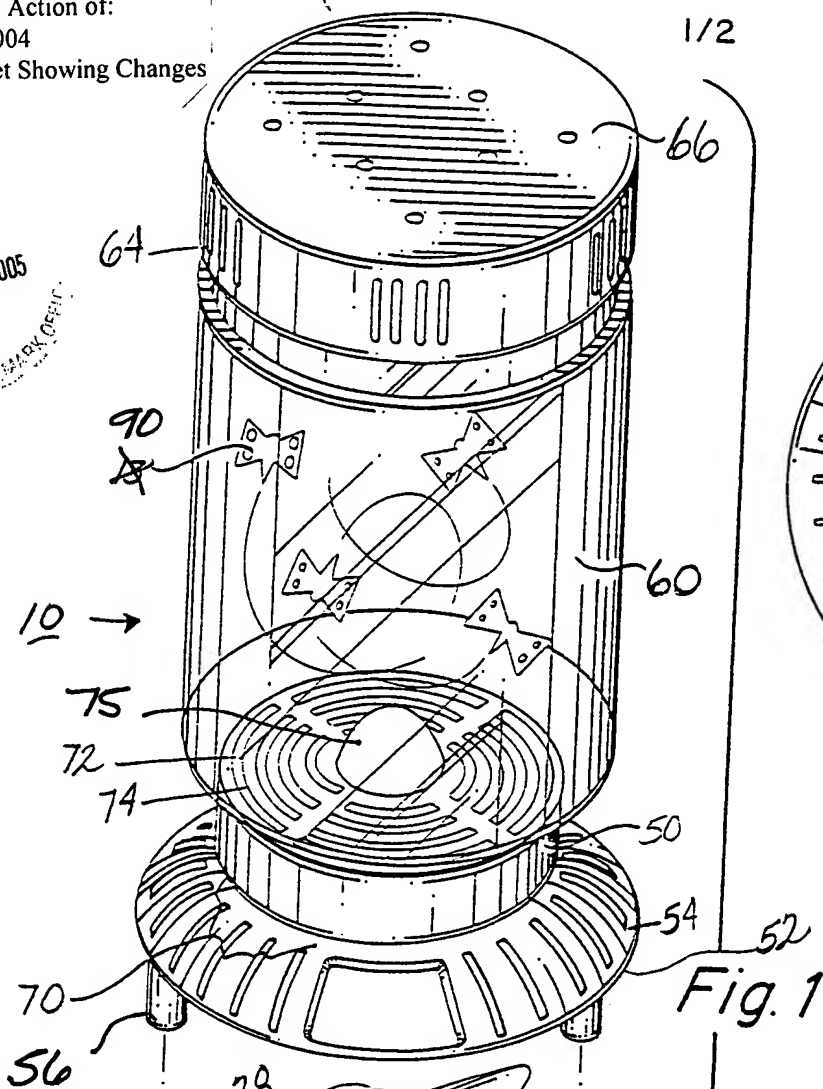


Fig. 1

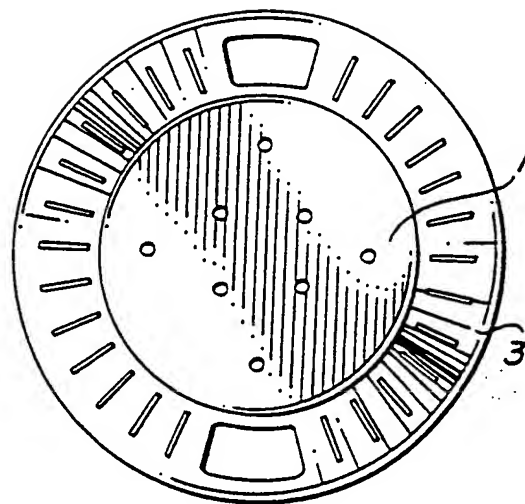


Fig. 2

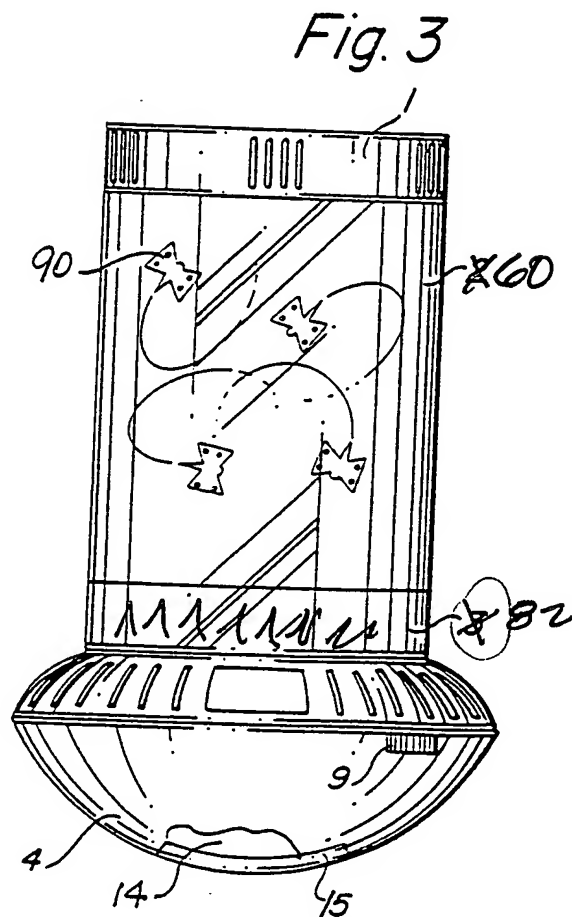


Fig. 3